IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Tampa Division

UNITED STATES OF AMERICA

v. Case No. 8:03-CR-77-T-30TBM

SAMI AMIN AL-ARIAN, et al.

Defendants.

SAMI AMIN AL-ARIAN'S RESPONSE AND OBJECTIONS TO GOVERNMENT'S MOTIONS IN LIMINE NOs. 1-4 TO PRECLUDE EVIDENCE AND INCORPORATED MEMORANDUM OF LAW

COMES NOW the Accused, Dr. Sami Amin Al-Arian, by counsel, and files this response and objections to the government's Motions in Limine Nos. 1 through 4.

STATEMENT OF FACTS

First Indictment

On February 20, 2003 Dr. Sami Al-Arian was indicted for the first time. The first indictment outlined a particular period in the history of a relationship between Palestine and Israel. The indictment covers events historical such as the Intifada; by its very terms, it alleges that the PIJ is an organization that commits criminal acts against the citizens of Israel and others for the purpose of furthering its aims. Among those aims were to end the illegal occupation of the geographical entity known throughout the world as Palestine. Their other stated goal was also to end the abuse of the indigenous population of that geographical entity. The initial indictment recognized, as most of the world does, that the geographical entity known as Palestine was occupied by the state of Israel. Numerous UN resolutions, Security Council resolutions, General Assembly resolutions of the UN,

of which the United States is a member, have recognized the illegal nature of the Israeli occupation, which occupation continues to this very day. One of the stated goals of the PIJ and other indigenous Palestinian organizations is to end the occupation. However, the government here has distorted the historical relationships and twisted the historical record in order to criminalize the activities of Dr. Al-Arian, an activist who unequivocally supports the liberation of his home, Palestine, from the illegal occupation by Israel.

Second Indictment

In an effort to further manipulate and distort the historical facts that underlie the relationships between Palestine and Israel, on September 21, 2004, the government superceded the indictment. It manipulated the grand jury into fashioning an indictment that went further in its distortion than the original, leaving out such terms as the "occupied territories".

Neither indictment expressly recognizes in any way the legitimate hopes and dreams of the Palestinian people. Neither indictment recognizes the numerous United Nations resolutions, which detail the illegality of the occupation. We are certain that the grand jury was never told the truth of the 50-year conflict that exists between Israel and the indigenous Palestinian population. We are equally sure that the grand jury was never told the truth of the violence that has been committed against that population to maintain the illegal occupation. The distortion of historical record represented by the indictment and this prosecution is palpable.

In this criminal case the government is actually seeking a referendum on the rightness of its conduct and Israel's conduct with respect to the Palestinian people. It is actually seeking this court to place its imprimatur on the conduct of affairs by the Israelis

in the illegally occupied territories. This court is not the appropriate forum for this. The appropriateness of the conduct of the Israelis and the response of the indigenous peoples to that conduct is by its very essence a political question.

General Discussion of Motions in Limine 1-4

The government has filed 4 Motions in Limine: Motion in Limine #1 to preclude affirmative defenses based on lawful combatant status and to exclude evidence in support thereof; Motion in Limine #2, to preclude affirmative defenses of claim of right and defense of property and to exclude evidence in support thereof; Motion in Limine #3 to preclude affirmative defenses of justification and to exclude evidence in support thereof; and Motion in Limine #4 to exclude evidence offered to establish an underlying basis for the legitimacy, merits or reasonableness of the political, religious and moral beliefs and goals of the Accused.

At the heart of each of these motions is the government's desire to promote a trial, which fails to acknowledge the true historical record regarding the conflict between Israel and Palestine and Dr. Al-Arian's relationship to it. It is that conflict that is at the heart of any just adjudication of this case.

Absent the conflict between Israel and Palestine there would be no need for activism on behalf of the Palestinian people. Most major world bodies have deemed the Israeli occupation to be both illegal and a denial of human rights. Separating this case from the 50-year conflict between Israel and Palestinians would be like trying to explain Nelson Mandela without an understanding of Apartheid. Without an appropriate historical foundation being laid, even the founding fathers of this country would seem like criminals and outlaws in their resort to armed revolt. The government has

continuously sought a trial without context. They seek to introduce Dr. Al-Arian's words without producing the information that caused him to speak. Absent the context, his words have a completely different meaning than they do when placed in context.

Similarly, if the actions and words of the civil rights movement in the United States were deprived of their historical context, the civil rights movement, considered by most of the world to be one of the great human rights struggles, could, in the hands of skillful prosecutors, appear to be little more than an organized attempt by a group of people to violate the law. In order to understand the cry for civil disobedience by Ghandi or Martin Luther King, one would have to have some understanding of Apartheid, Colonialism, Jim Crow laws and Black codes, and the society in which they existed. Sami Al-Arian's statements, conduct, and cries for justice, do not exist in a vacuum. They exist as a response to the world that his people are forced to live in. However, the government seeks to place Dr. Al-Arian's speech in space without context and obtain a verdict based upon this.

What these motions in fact represent, when viewed as a whole, is another attempt to obscure this Court's ruling with respect to Scienter or personal responsibility. Having taken two bites at the apple, the government attempts a third bite. Absent an historical context, "Damn Israel" seems to be the statement of an irrational racist. Placed in the right context it may be merely an angry response to a continued and systematic series of violations of the basic human rights of Palestinians. There is a clear difference between the two interpretations of the same words. In this case, where the Court has ruled Scienter to be important, the government seeks to offer racism and hate as the only reason the words were spoken and then seeks to deny the defense the opportunity to offer the

more benign explanation that the statement may result from the conditions that a subjugated people are forced to endure. What the government wishes to do is misinform the jury in an effort to obtain a conviction at a great cost to justice and fairness. However, the government has been held to an additional burden because of the First Amendment implications of this prosecution.

If Sami Al-Arian is the irrational violent terrorist that the government pretends that he is, the evidence is either there or not there. And a proper test of all the relevant evidence will provide a truthful answer if the system is just. The government seeks to unbalance the scales, deprive the jury of context, and claim the defendant's words establish that he is evil without response. They seek to ignore the notion of personal guilt, which this Court has directed them to prove.

Motion in Limine #1

In Motion in Limine #1, the government suggests that Dr. Al-Arian and the Palestinian Islamic Jihad do not have the right to have a defense premised on a lawful combatant status basis. While we have not raised this as an issue, the government's motion is telling as it reveals the thrust of the deception here.

As an initial issue, the government cites *U.S. v. Lindh*, 212 F. Supp 2d 541, 553 and states the following:

> "rather the defense is available only to a defendant who can establish that he is a lawful combatant against the United States under definition established in international law that is binding upon the United States."

As a first matter of concern, the defense is unaware that the United States is a combatant at all in the occupied territories. In fact, the Court's order, Doc. 592, at 5, states emphatically that the U.S. is not at war with the Palestinian Islamic Jihad, nor have

the defendants been charged with making war against the United States, nor does it seem that the U.S. is at war with any factions in Palestine that seek the removal of Israel from the occupied territories. The government also cites United States v. Al-Hussayen for the finding that there the defendant failed to establish certain guerilla fighters were lawful combatants. In that case, Al-Hussayen was indicted for running a Web site that had links to other Web sites that in turn included incendiary speeches by Muslim clerics. While Mr. Al-Hussayen may have lost that legal battle, he won the war when he was acquitted on all terrorism charges by a jury in Idaho where notions of free speech apparently still hold sway.

Next, the U.S. flatly states "neither the Hague Convention nor the 1949 Geneva Convention could protect these defendants from prosecution because those treaties do not apply to the Israeli/Palestinian conflict." Just like the U.S. has indulged in the fantasy of "territories" vs. "occupied territories" in the indictment in these matters, it indulges in another fantasy here. The International Court of Justice, on July 9, 2004, recognized the 1949 Geneva Convention applied to the occupied territories.

> The Court would moreover note that the States parties to the Fourth Geneva Convention approved that interpretation at their Conference on 15 July 1999. They issued a statement in which they "reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem". Subsequently, on 5 December 2001, the High Contracting Parties, referring in particular to Article 1 of the Fourth Geneva Convention of 1949, once again reaffirmed the "applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem". They further reminded the Contracting Parties participating in the Conference, the parties to the conflict, and the State of Israel as occupying Power, of their respective obligations.

Paragraph 100 notes that the Israeli Supreme Court recognized that the 4th Geneva Convention applied to the occupied territories:

> The Court would note finally that the Supreme Court of Israel, in a judgment dated 30 May 2004, also found that:
>
> "The Military operations of the [Israeli Defence Forces] in Rafah, to the extent they affect civilians, are governed by Hague Convention IV Respecting the Laws and Customs of War on land 1907 … and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949."

Finally paragraph 101 seems to seal the deal:

> In view of the foregoing, the Court considers that the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties. Israel and Jordan were parties to that Convention when the 1967 armed conflict broke out. The Court accordingly finds that that Convention is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel, there being no need for any enquiry into the precise prior status of those territories.

The Hague court, in pertinent part, continued:

> 98. The Court notes that the General Assembly has, in many of its resolutions, taken a position to the same effect. Thus on 10 December 2001 and 9 December 2003, in resolutions 56/60 and 58/97, it reaffirmed "that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967".
>
> 99. The Security Council, for its part, had already on 14 June 1967 taken the view in resolution 237 (1967) that "all the obligations of the Geneva Convention relative to the Treatment of Prisoners of War . . . should be complied with by the parties involved in the conflict".

Prior to this decision, on 15 September 1969, the Security Council, in resolution 271 (1969), called upon "Israel scrupulously to observe the provisions of the Geneva Conventions and international law governing military occupation". Ten years later, the Security Council examined "the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967". In resolution 446 (1979) of 22 March 1979, the Security Council considered that those

settlements had "no legal validity" and affirmed "*once more* that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem". It called "*once more upon* Israel, as the occupying Power, to abide scrupulously" by that Convention.

On 20 December 1990, the Security Council, in resolution 681 (1990), urged "the Government of Israel to accept the *de jure* applicability of the Fourth Geneva Convention . . . to all the territories occupied by Israel since 1967 and to abide scrupulously by the provisions of the Convention". It further called upon "the high contracting parties to the said Fourth Geneva Convention to ensure respect by Israel, the occupying Power, for its obligations under the Convention in accordance with article 1 thereof". Lastly, in resolutions 799 (1992) of 18 December 1992 and 904 (1994) of 18 March 1994, the Security Council reaffirmed its position concerning the applicability of the Fourth Geneva Convention in the occupied territories. Thus, just as in regards to the indictment, the United States seems to be at odds with the current trends of international law.

What the government also reveals in this motion is their willingness to ignore and dismiss the whole scale violations of human rights and international law by the Israeli government in its occupation of Palestine. In their motion the government easily dismisses any claims of atrocities by the Israelis upon the "ethnic Palestinians" (an interesting designation) as irrelevant.

> "Nor can the defendants establish the PIJ enterprise's status as a lawful combatant by citing alleged atrocities committed by Israel on "ethnic Palestinians" or by

> arguing the justice and righteousness of the PIJ enterprise's cause. It is irrelevant…whether the actions of the combatants are philosophically, morally or ethically justified or noble. Neither the Hague Convention Annex nor the 1949 Geneva Convention takes cognizance of any difference between those on the claimed "right " side of a conflict and those on the allegedly 'wrong" side."Doc. 973 at 18.

However, contrary to what the government suggests, international law has recognized and denounced, in numerous U.N. Resolutions, the serial abuses by Israel, even describing certain conduct as "war crimes." On 19 October 2000, a special session of the UN Commission on Human Rights adopted a Resolution set forth in UN Document E/CN.4/S-5L.2/Rev.1

> "Condemning the provocative visit to Al-Haram Al-Sharif on 28 September 2000 by Ariel Sharon, the Likud party leader, which triggered the tragic events that followed in occupied East Jerusalem and the other occupied Palestinian territories, resulting in a high number of deaths and injuries among Palestinian civilians." The UN Human Rights commission then said it was "[g] ravely concerned" about several different types of atrocities inflicted by Israel upon the Palestinian people, which it denominated "war crimes, flagrant violations of international humanitarian law and crimes against humanity."

The wholesale human rights violations, the day-to-day physical and psychological assaults on the men, women and children who are unfortunate enough to have been born in occupied Palestine are at no moment here and irrelevant simply because the U.S. says they are. However, the basis for Dr. Al-Arian's personal activism on the Palestinian issue and other civil rights matters, characterized as overt acts in this indictment, is relevant to establish his specific intent. Evidence that explains his opinions about the struggles and the violence in the Occupied Territories, are relevant here. The continued denial of the truth of the occupation is at the heart of this prosecution.

Of particular interest is the U.S. resort to international law. In this instance, the Geneva accords are significant because the U.S. believes its interpretation renders them

dispositive in its favor. However, this is the same government that views those very same accords as "quaint" when it comes to torture and the illegal rendition of prisoners in its custody. The United States, a nation of laws, should not attempt to resort to international law only when it believes it supports its cause and completely ignore it when it does not.

Motion in Limine #2

> "At the outset, the United States does not concede that Palestinians as a collective ethnic group have any cognizable claim of right under international law to the area comprising Israel or the Territories…"

See Doc. 975 at 2. The prosecutors in the Middle District of Florida seem to be in the world's minority in denying the belligerent occupation by Israel of the Palestinian territories. The reality of the Israeli occupation fills volumes of articles, books and United Nations resolutions. Truth and reality must have a place in an American courtroom and any evidence that rebuts the violence, which the government wishes to attribute to Dr. Al-Arian, through an alleged association with the PIJ, should be admissible.

Against the backdrop of the long and enduring history of conflict between the Israelis and the Palestinians the government has also suggested that the Palestinians have no claim of right and no right to defend their property. That the insults to Palestinians and Palestinian land, the death and destruction, give rise to no claim of right or defense of property is typical in the government's political recitation of the historical record. The government, in language reminiscent of early Zionist propaganda, ignore the two millennia history of the Palestinian people in the occupied territories. 'A land without a people for a people without a land' typified early Zionist propaganda on Palestine and

seems to inform the government's arguments in this motion. In a matter of strokes on a keyboard, the AUSA dismisses an Arab population exiled from their homelands.

> "The territory that the PIJ claims belongs to the Palestinian people has been in possession of other countries *for decades* before the violent acts alleged in the Superseding Indictment were perpetrated by the PIJ enterprise or these defendants committed the alleged offenses." P. 10

Assuming the government is referring to the Arab-Israeli war of 1948 *decades* ago, the government conveniently dismisses the 700,000-800,000 Palestinians who were driven, in 1949, from their homes. (See *The Birth of the Palestinian Refugee Problem, 1947-1949, Benny Morris.*) The following estimates are cited for the total number of Palestinian refugees by 1949:

UN-sponsored Palestine Conciliation Commission (PCC)	711,000
United National Relief and Works Agency (UNRWA)	726,000
UN Economic Survey Mission	726,000
British Government	810,000
British Foreign Office	711,000

In 'The Crisis' (1905), Hillel Zeitlin charged what the Zionists bent on settlement in Palestine 'forget, mistakenly or maliciously, is that Palestine belongs to others and *it is totally settled'*. Norman Finkelstein: Image and Reality of the Israel-Palestine Conflict (p.95). In their motion, the government distorts the implication of international law and the historical record by dismissing the claim of right by the Palestinians.

The circular logic of this argument, however, attempts to distract the Court from the central question, i.e. whether Dr. Al-Arian is allowed to present evidence that points to his state of mind and his specific intent when he discussed, wrote about, promoted conferences regarding, or in any other manner supported the claim of right and defense of property by the Palestinian people. His activities, thoughts, writings, and speeches go to the very issue of intent. Absent that it becomes guilt by association. The government has

to establish personal guilt. The defense has a right to use *any* evidence that establishes the absence of that specific intent. Otherwise there is no right to defend.

Florida Law

The United States seeks to use Florida Law to govern activities, extortion and murder, although none of the events happened in Florida. These events occurred over 6,000 miles away from Florida and none of the events charged in the indictment in any way involved a case or controversy in the state of Florida. The sole connection to the state of Florida is the presence of the defendant. None of the violent events charged are alleged to have been committed either directly or indirectly by any actors in the state of Florida.

Indeed, the Florida legislature could not have understood or comprehended when it passed the extortion act that such legislation would ever be utilized in this way. In this case the government seeks not to apply international law or international law standards. It seeks to apply the law of the state of Florida to a controversy that is occurring in the Middle East as if the application of the law of Florida could settle this controversy. If the Israelis and the Americans feel that the application of international law is inappropriate what will the rest of the world think of the application of Florida law? The law of extortion and murder were not designed to reach the political conflicts in the Middle East much less anywhere in the world. If a Saudi court decided to intervene in a conflict between New York and Florida and apply Saudi law simply because a person from New York was living in Saudi Arabia, it would be easy to fault such a proceeding. The United States, a country which has been hostile to all applications of criminal law internationally

is here involved prosecuting people because of their involvement in a dispute in the occupied territories utilizing Florida law.

The thrust of Motion in Limine #2 rests upon the application of Florida law to events occurring some thousands of miles away in another country. It is inconceivable to the defense that the Florida extortion statute was ever viewed as covering events which occurred in the occupied territories of Palestine. What the U.S. has done here is attempted to use Florida law to govern the conduct of competing entities in an international dispute. Does Florida law govern the conduct of Pakistan and India over Kashmir simply because people in Florida advocate for one side or the other? Can an international dispute and disputes between advocacy groups be governed by Florida law?

Common sense would seem to dictate that a group of United States attorneys should not be able to pick an international dispute, ascribe good motive to one side, bad motive to the other, and as a result, prosecute under state law the advocates for the side deemed evil for their advocacy; however, that is exactly what is happening here. Moreover, not satisfied with merely prosecuting the advocates, the government says the history of the dispute is irrelevant because *they* don't recognize the history.

Apparently, the U.S. gets to judge the efficacy of a cause in each side of any political dispute between peoples of the world and criminalize the conduct of those who might disagree with it, by resorting to state law. Virtually all world conflict falls therefore under the gambit of the law of the State of Florida. And counsel didn't even know that Florida had a foreign policy. The danger here ought to become readily apparent to anyone who takes a moment to think about it. Clearly what the ultimate end

of this situation is to place a judicial imprimatur on a foreign policy determinations, which are normally political questions.

We have to wonder what happens to free speech where objections to the current foreign policy of the United States can lead to life imprisonment without any personal acts of violence being at issue.

Justiciability

The government's reliance upon the authority of a civil case, Knox v. Palestine Liberation Organization, 306 F. Supp. 2d 424 (S.D.N.Y. 2004) to support their claim that the recognition of the state of Israel as a sovereign nation is a political fact, not subject to adjudication in a criminal case and, therefore, the defense cannot argue that their presence on the land constitutes a felony, is misplaced. The Knox case involved the assertion of claims arising under the Antiterrorism Act of 1990, 18 U.S.C. 2331 et seq. (the "ATA"), and other related common law tort causes of action. The Plaintiffs, as representative, heirs and survivors of the Estate of Aharon Ellis ("Ellis") commenced this action in which they alleged that Ellis was murdered in a terrorist attack that occurred in Israel in January 2002 and that the shooting was planned and carried out by a defendant Abdel Salam Sadek Hassuna ("Hassuna") acting in concert with and under the direction and assistance of the Palestinian Liberation Organization ("PLO"), the Palestinian Authority ("PA"), Yasser Arafat ("Arafat"), chairman of the PLO and leader of the PA, as well as numerous other named and unnamed individual defendants (collectively "Defendants"). In a motion to dismiss the complaint, the defense asserted, among other grounds, non-justiciability. The court resisted any role in determining the political

questions involved in the Palestinian Israeli conflict and denied the defendant's motion stating:

> Defendants urge the Court to dismiss the case on the ground that it raises non-justiciable political questions. Specifically, Defendants assert that this case will require the Court to "assess the Palestinian-Israeli conflict over the years" and to "adjudicate history in progress." (Def. Mem. at 26-27.) The Court disagrees. *As explained more fully above, the Court will not, and need not, endeavor to answer or otherwise lend its views towards these broader and intractable political questions, which form the backdrop to this lawsuit.* This lawsuit will simply adjudicate whether and to what extent the Plaintiffs may recover against Defendants under certain causes of action for the violence that occurred in Hadera, Israel on the night of January 17, 2002. Id at 448.

In our case, the government seeks this court to do what the Knox court would not do, i.e. endeavor to answer or otherwise lend its views towards these broader and intractable political questions. The government seeks to have the Court place its imprimatur on the conduct of the Israeli military and its treatment of the Palestinian people. Once again the AUSA is logically circular…it wants certain facts treated as stipulated facts which cannot be challenged, i.e. the sovereignty of Israel over the territories and then claim it is nonjusticiable.

But the Accused is deprived of equal stipulations and cannot present a defense, comprised of speech, writings, lectures, etc. that advocates for a solution, education, a moderate voice about what he thinks of the Palestinian claim of right and the right to defend their property. Evidence of his opinion on the issue of the right of return and defense of property informs many of the activities now known to us as Overt Acts. The WISE research center and ICP conferences explored the Israeli occupation of Palestinian land, along with a host of other issues confronting the Arab world. Dr. Al-Arian's activities, in fact, focus throughout the indictment on speech, political organizing against

the use of secret evidence, etc. The Knox case refused a claim of justiciability because it narrowed its scope to deciding whether or what extent the Plaintiffs may recover against the Defendants in a tort action. We do not have that here.

Motion in Limine #3

The government's Motion in Limine #3 seeks to preclude the defense from arguing and presenting any evidence of "an affirmative defense of justification" to the jury. The government presumes, in all their arguments, that Dr. Al-Arian is guilty of association with the activities of the PIJ as alleged in Count 1 of the superceding Indictment. The government acknowledges that Dr. Al-Arian has "resided in this country thousands of miles from Israel or the Territories, throughout the entire duration" of the alleged conspiracy. Doc.977 at 5. Further, the government concedes Dr. Al-Arian's record of legal and peaceable advocacy:

> "The panoramic range of these assorted activities and accompanying opportunities for these defendants to express their grievances to political decision-makers clearly demonstrates that they and their co-defendants are keenly aware of and have exercised many legal options for advancing their political goals." Page 9 Emphasis added.

Therefore, the government is reduced to talking about the alleged activities of the PIJ, since Dr. Al-Arian is not alleged to have personally participated in any of these activities.

While the Accused has not specifically claimed a specific defense of 'justification', it is important to evaluate the distortions contained within this particular motion. The United States Attorney relies upon the authority of United States v. Hurn, 368 F.3d 1359, (11 th Cir. 2004) for the argument that a defendant is not entitled to

present to the jury "irrelevant or otherwise inadmissible evidence." However, the Court there expressly held:

> At a criminal trial, the defendant must not only be permitted to introduce evidence directly pertaining to any of the actual elements of the charged offense or an affirmative defense*, but must also be permitted to introduce evidence pertaining to collateral matters that, through a reasonable chain of inferences, could make the existence of one or more of the elements of the charged offense or an affirmative defense more or less certain*. Id at 1363. Emphasis added.

Further, the Court held that an "exclusion of this evidence violated the due process rights of the accused in this regard." Id. Here, the government wishes to preclude the Accused from offering *any* evidence, which would provide a context and meaning for his activism, both political and scholarly, conduct and behavior during the course of this alleged conspiracy. However, this is evidence that this Court's Orders on the issue of Scienter, clearly allow. When taken as a whole, the governments 4 motions in limine seek to prevent Dr. Al-Arian from presenting any defense at all.

The government details the elements a defendant must show in order to establish a valid defense of necessity on page 5 of their memorandum of law. While we do not argue their citation of the elements required to proffer a defense of necessity, we make the following observation in that regard. The Palestinians have been under an unlawful and violent occupation for nearly 50 years. The threat of "present death or serious bodily injury" has certainly been visited upon the Palestinians. (See Israeli Information Center for Human Rights in the Occupied Territories, B'Tselem statistics below). An argument can certainly be made that the Palestinians did not negligently place themselves in a situation, given that Israel has been occupying their land since 1948. While we do not necessarily endorse the argument that Palestinians might make with respect to the fact that they have had no "reasonable legal alternative to violating the

law", again we refer to the historical petitions to the United Nations and to the United States that have failed to bring about a real peace in the Occupied Territories. Finally, the element of a "direct causal relationship between criminal action & avoidance of threatened harm" could arguably be rebutted with evidence of self defense.

In another more obvious distortion, the government argues that the "United States Executive has recognized Israel as the sovereign power over the Territories and Israelis as lawful occupants of the Territories" citing to Knox v. Palestinian Liberation Organization, 307 F. Supp. 2d 424, 446 (S.D.N.Y. 2004). However, a thorough reading of the case does not reveal this to be the holding. The case concerns itself with the sovereignty of Palestine, not Israel. Nowhere in that decision does the court hold, as the government would have us believe, that there has been recognition of Israel as the sovereign power over the occupied Palestinian Territories. This is characteristic of the government's distortion and dismissal of the historical record. In fact, their arguments tend to read more like political policy statements for the government of Israel, instead of legitimate pretrial motions. However, the political positions the government continues to make, in defiance of the historical record and international law, require some response.

According to international law scholars, Israel is a "belligerent occupant" of the Palestinian occupied territories. Occupation is a question of fact not law. On 7 Oct. 2000, United Nations Security Council adopted Resolution 1322 (2000), with the United States abstaining. Because it did not veto this resolution, which it could have done, this Resolution became a matter of binding international law. In paragraph 3 of the Resolution, the Security Council:

> "Calls upon Israel, the occupying Power…".

"Occupying power", according to legal scholars, has a definite meaning in public international law. Israel only "occupies the West Bank, the Gaza Strip, and the entire City of Jerusalem. As such, Israel has no sovereignty over the West Bank, or the Gaza Strip, or the entire City of Jerusalem. Palestine Palestinians and International Law, by Francis A. Boyle. The defense makes these observations to emphasize the debate over Israel's occupation of the Palestinian Territories.

The real question before this Court has already been answered in its two previous Orders regarding scienter. Dr. Al-Arian should be allowed to present all evidence, which goes to his state of mind that rebuts any of the charges in this prosecution. If some of that evidence relates to his conduct, i.e. conversations, organization of conferences, civil rights activism regarding the rights of Palestinians under occupation to resist, it is admissible. That is not a political question, it is a legal one.

Motion in Limine #4

In discussing the issue of personal guilt in its Order of August 4, 2004, this Court looked to the seminal opinion in Scales v. United States, 367 U.S. 203 (1961).

> "In our jurisprudence guilt is personal, and when imposition of punishment on a status or on conduct can only be justified by reference to the relationship of that status or conduct to other concededly criminal activity … that relationship must be sufficiently substantial to satisfy the concept of personal guilt in order to withstand attack under the Due Process Clause of the Fifth Amendment."

Id.at 224-25 (emphasis added). Document 592, at 9.

This was the essence of this court's ruling when it imposed a Scienter requirement in this matter. The government has chaffed under this ruling and it continues to make an

effort to avoid the consequences of the ruling. Its most recent effort occurs in Motion in Limine #4. In its memorandum, the government not too subtly attempts to distort this court's ruling.

> "With respect to some offenses, the United States must prove that the defendants acted with a certain type of specific knowledge of intent, such as knowledge that the support and money they provided could be used to promote the PIJ Enterprise's illegal conduct."

See United States v. Al-Arian, 308 F. Supp. 2d 1322, 1338-39 (M.D. Fla. 2004); Government; Doc. 592 at 7. See Doc. 979 at 3.

The *actual* language of the court decision is:

> "Therefore, this Court concludes that to convict a defendant under Section 2339B(a)(1) the government must prove beyond a reasonable doubt that the defendant knew that: (a) the organization was a FTO or had committed unlawful activities that caused it to be so designated; and (b) what he was furnishing was "material support." To avoid Fifth Amendment personal guilt problems, this Courts concludes that the government must show more than a defendant knew something was within a category of "material support" in order to meet (b). In order to meet (b), the government must show that the defendant knew (had a specific intent) that the support ***would*** further the illegal activities of a FTO."

Under normal circumstances, one might think that the government's error was merely typographical. However, the standard the government states in its memo is actually the same standard the government proposed in its earlier motion for reconsideration.

> "Even if Section 2339B were subject to a Scales analysis however, an interpretation of the statute's knowingly requirement to require both knowledge that one is providing "material support" and knowledge that one is providing "material support" to an FTO is sufficient to ensure "personal guilt." There is no need, as there was in Scales, to "make up for" the lack of personal action by requiring a specific intent to further others' criminal activities. A contributor who knowingly provides material support to an organization that he knows is an FTO provides that organization with something that can further

> its terrorist goals directly or indirectly (by freeing up other resources) – whether he specifically intends to further those activities or not."

See Government's Motion for Reconsideration, Doc. 520 at 7. This distortion was intentional.

From the government's perspective, this case has always been about the mere association of Dr. Al-Arian with the PIJ. Nothing else makes any difference. They will attempt to build their case around brutal murder scenes and body parts, knowing that neither Dr. Al-Arian nor his co-defendants present before the court, ordered, planned, participated in, or had any knowledge of these events before they occurred. The government fully expects to put this information before the jury in an effort to associate Dr. Al-Arian with it. They will introduce phone calls under the guise of overt acts in which people discuss events in the occupied territories and support the Palestinian view of the conflict rather than the Israeli's view. The government will claim that the defendants' attitudes about events in the Middle East show their intent. Yet, the best evidence of their intent is what these defendants did in the face of the continued brutality of their people. What the government hopes to strip from the case is the part of the case that shows these defendants' non-violence when confronted with the facts of the Israeli occupation. Individuals with less of a commitment to non-violence than Dr. Al-Arian would act far differently than he would have when confronted with far less grievous insults to their people.

Could an individual believe in the liberation of Palestine and pray that it comes peaceably? What might motivate that individual to feel that he needs to be involved in the debate and the discussion surrounding the struggle of a people trying to build a country?

The things that motivated Dr. Al-Arian are the things that would motivate any thinking and caring individual if he were witness to the harm being done to his people. The painful statistics of violence against the Palestinian people during the first intifadah give context to what might have motivated Dr. Al-Arian to pursue his activism. According to the Chicago-based Palestine Human Rights Information Center (PHRIC):

> "From December 9, 1987 through May 31, 1990 there have occurred 838 deaths directly attributable to Israeli occupation forces, 208 of whom were children. Of these victims, 689 were shot to death and 88 deaths were produced by tear gas.
>
> During that same period the PHRIC estimated the infliction of 93,500 personal injuries upon Palestinians; 9550 people subjected to administrative detention, 3770 days of curfews on the West Bank and 371 days on the Gaza Strip; and 1467 homes and other structures demolished or sealed. In a veritable war against nature the Israeli army has also uprooted approximately 87,473 olive and fruit trees."
> Palestine Palestinians and International Law, by Francis A. Boyle

Human rights groups of all stripes have recognized the plight of the Palestinians. The Israeli Information Center for Human Rights in the Occupied Territories, B'Tselem, reports:

> "From September 29, 2000 through April 20, 2005, 3,168 Palestinians have been killed by Israeli security forces in the Occupied Territories. Of those, 642 were Palestinian children. From October 2001 (when house demolitions as punishment began again after a break of almost four years) to January 2005, Israel demolished 675 homes in the Occupied Territories as punishment. In 2004, 10,663 Palestinians lost their homes."

According to figures of UNRWA, from the beginning of the intifada to September 2004, Israel destroyed some 2,370 housing units in the Gaza Strip, leaving approximately 22,800 people homeless.

Amnesty International published an assessment of the human rights situation since Oslo as the Wye memorandum was signed.

> "AI estimates 1600 Palestinians routinely arrested by Israeli military forces every year, half "systematically tortured." AI notes once again that as other major human rights organizations regularly have, that Israel is alone in having "effectively legalized the use of torture" (with Supreme Court approval), determining that in pursuit of Israel's perceived security needs "all international rules of conduct could be broken."

Amnesty International, *Five Years after the Oslo Agreement* (September 1998).

Dr. Al-Arian was aware of this. He believed that the coverage of the Palestinian struggle in the United States had not been accurate.

What essentially the defendants are on trial for *is their advocacy* in favor of the Palestinian side of the controversy that exists between Israel and Palestine. Unlike Bin Laden who suggests that his Islamic war is to be fought against Americans, there is *no* evidence here that Dr. Al-Arian, or anyone, suggested that Americans be killed.

The government has placed the Accused's beliefs, his activities, his words and his writings in issue. Dr. Al-Arian's motives for his activism, his reasons for his involvement in WISE and ICP, the purposes of the conferences, his attempts to make people aware of the plight of the Palestinians, therefore are all part of this case. By denying the truth of the conflict between Israel and Palestine, the court would deny the full exculpatory nature of Dr. Al-Arian's activism.

The government has believed this case was about association. But this case is about much more. The government in this case wants to place before the jury scenes of bombings, gruesome videos of body parts, blood and gore, autopsy reports, and portray this as somehow representing the Accused's beliefs. Yet when a more benign view is

offered and when the Accused attempts to explain his beliefs and why he holds them, the government suggests that *this* will inflame the jury.

CONCLUSION

Ultimately, the government seeks to impermissibly turn this court into an instrument of foreign policy to judicially determined that history be damned – that Palestinians have no rights that an American court is bound to respect, they cannot defend themselves, they cannot speak to their oppression, they cannot petition the people of the United States to change its policy. They are not entitled to self defense or self determination. When confronted with similar abuse in another time, the revered founders of this country wrote:

> We hold these truths to be self evident that all men are created equal that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it…..
> Declaration of Independence July 4, 1776

How is it that a people who revere the Declaration of Independence decide that one group of people is entitled to that self determination and one group is not? Are these inalienable rights limited only to the sons and daughters of the continent of Europe? Or were they intended to apply across the board to all peoples who are oppressed? Is it not the height of hypocrisy to contend that our forefathers had the right to resist and the sons and daughters of Palestine do not? Truth should not be sacrificed on the altar of conviction. This is "justice" without history.

WHEREFORE, because the granting of the government's Motions in Limine Nos. 1 –4 would violate Dr. Al-Arian's due process rights to present relevant evidence in his defense, the Accused, by and through undersigned counsel,requests these motions be denied.

Dated: 5 May 2005

Respectfully submitted,

/s/ Linda Moreno___
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th May 2005, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and to Stephen N. Bernstein, Counsel for Sameeh Hammoudeh.

/s/ Linda Moreno
Linda Moreno
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